IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 818 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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NILKANTH TRADING COMPANY

Versus

VIKAS TRADERS THRO' PROPRIETORS

Appearance:

1. Civil Revision Application No. 818 of 2002

MR PS CHAMPANERI for Petitioner No. 1-4

MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/08/2002

ORAL JUDGEMENT

During the course of hearing it has transpired that the trial court has dismissed a application of the petitioner-original defendant in Special Civil Suit

No.30/99 for raising additional issue of jurisdiction as well as for hearing the said issue as preliminary issue. The said application has been dismissed by the trial court mainly on the ground that the issue of jurisdiction is a mixed question of law and fact and, therefore, such an application cannot be dealt with at this stage. It is an admitted position that the petitioners herein have raised defence that the court has no jurisdiction to hear and dispose of the suit since the cause of action did not rise within the territory of the said court. It seems that the trial court did not frame issue about the jurisdiction and when the aforesaid application was submitted, the trial court has dismissed the said application on the ground that it is a mixed question of law and fact. Even if it is a mixed question of fact and law, the issue has to be raised but it will not be heard as preliminary issue. It is more so, when the parties have commenced evidence and when the evidence has been commenced, there cannot be hearing of a particular issue as preliminary issue. In that view of the matter, this revision application will be required to be partly allowed on a consideration that the trial court has not considered the first aspect of the case about raising an issue. Therefore, that part of the order of the trial court is required to be altered, since there is total non-application of mind and the said aspect has not at all been considered. So far as the second part is concerned, the trial court was justified in not permitting hearing of the issue of jurisdiction as preliminary issue. In that view of the matter, this revision is partly allowed. The trial court is directed to frame issue as follows:

"Whether the plaintiffs proved that the court has got territorial jurisdiction to hear and decide the suit ?"

The court shall naturally provide reasonable opportunity to the parties to lead evidence on the aforesaid issue and to decide the issue in accordance with the prayer of the petitioner for hearing the issue as preliminary issue, which was rightly rejected by the trial court and that part of the revision shall stand rejected. In that view of the matter, this revision application is partly allowed as aforesaid. Rule is made partly absolute. No order as to costs.

16.8.2002 [D P Buch, J.]
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